Standard-Coosa-Thatcher, Carpet Yarn Division, Inc. *and* **Amalgamated Clothing and Textile Workers Union, AFL-CIO, CLC.** Cases 10-CA-14634 and 10-RC-11707

July 29, 1981

DECISION AND ORDER

On July 7, 1980, Administrative Law Judge Claude R. Wolfe issued the attached Decision in this proceeding. Thereafter, the Charging Party and the Respondent, respectively, filed exceptions and supporting briefs.

The Board has considered the record and the attached Decision in light of the exceptions and briefs, and has decided to affirm the rulings, findings,[1] and conclusions[2] of the Administrative Law Judge and to adopt his recommended Order, as modified herein.

Johnnie's Poultry Safeguards

As more fully described by the Administrative Law Judge, the credited testimony shows that Martha C. Perrin, the Respondent's counsel, advised employee Willis Langston that she was the Respondent's lawyer and that her inquiry about his authorization card was in preparation for hearing. Perrin asked Langston whether he had signed the card which was in front of them and whether employer Bobby Joe King described the purpose of the card to Langston. Langston promptly replied that he had read and signed the card and that there was no need for having King explain the purpose of the card because Langston knew what he was signing. The credited testimony also shows that Perrin neither read the prepared statement[3] to Langston nor orally recited the safeguards therein.

The Administrative Law Judge found that the only real issue is whether Perrin's failure to assure Langston that there would be no reprisals rendered her inquiry violative of the Act. Although the Administrative Law Judge found that a strict application of the *Johnnie's Poultry*[4] standards would appear to require finding a violation, he nevertheless dismissed the allegation. In so doing, the Administrative Law Judge found that Perrin properly advised every one of 70 employees interviewed except Langston of the safeguards, that the content of the meetings was widely known among the employees, and that "Langston was most likely forewarned about the content of the interviews." Hence, the Administrative Law Judge found that the coercive impact of Perrin's questions was minimal and he dismissed the allegation. We disagree.

Compliance with *Johnnie's Poultry* safeguards is the minimum required to dispel the potential for coercion in circumstances where an employee is interrogated concerning his intended testimony before the Board.[5] The effect of the Administrative Law Judge's Decision here is to substitute a different standard. He would excuse compliance where an employee "was most likely forewarned about the content of the interviews." But *Johnnie's Poultry* safeguards require the Respondent not only to explain the purpose of the questions but also to assure the employee "that no reprisal will take place, and obtain his participation on a voluntary basis . . . ."[6] It is plain that the Respondent failed to satisfy these requirements in connection with Perrin's interrogation of Langston. We are not prepared to rely on speculation and surmise to infer compliance or to excuse the failure to provide the safeguards to Langston because the Respondent satisfied them with respect to other employees. The effect of the Respondent's failure to provide the safeguards during the Langston interrogation is the same whether by design or inadvertence. Hence, we find that the Respondent violated Section 8(a)(1) of the Act by coercively interrogating employee Langston with regard to the verification of the Union's majority.

The Bargaining Order

The Administrative Law Judge found, and the record shows, that the Union represented a majority of the Respondent's employees in the unit when the Union requested, and the Respondent refused, recognition in March 1979. The Administrative Law Judge also found that "Respondent's conduct

[1] The Respondent and the Charging Party have excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

In sec. IV,C,4(a), of his Decision, the Administrative Law Judge inadvertently referred to Plant Manager Jack Bowman as "employee Bowman" and omitted Whisenant's question to Bowman. Thus, the third sentence, immediately following the sentence ending with footnote reference 35, should read: "Whisenant asked Bowman 'if our benefits would be taken away if the Union comes in.' Plant Manager Bowman acknowledged that the leaflet was correct and continued that after negotiations commenced benefits could go up or down or remain the same."

[2] In the absence of exceptions, we adopt, *pro forma*, the Administrative Law Judge's dismissal of the allegation that Lowery's interrogation of Underwood, on or about April 19, 1979, violated Sec. 8(a)(1) of the Act.

[3] The prepared statement, set out in the Administrative Law Judge's Decision, explains, *inter alia*, that Perrin's purpose in talking with the employees was to help the Respondent prepare for an unfair labor practice hearing and that the interview was strictly voluntary on the employee's part.

[4] *Johnnie's Poultry Co. and John Bishop Poultry Co., Successor*, 146 NLRB 770 (1964).

[5] *Roadway Express, Inc.*, 239 NLRB 653 (1978).

[6] 146 NLRB at 775.

had 'the tendency to undermine [the Union's] majority strength and impede the election processes,' that the continuing impact of Respondent's coercive conduct renders a fair election unlikely, and that the authorization cards signed by employees are a more reliable indication of their desire for representation." We agree.

In adopting the Administrative Law Judge's findings and recommendations, *supra*, we have taken into account that the serious and extensive unlawful activities by the Respondent commenced immediately after the Union began its organization drive and continued unabated right up to the election and even after the election. Thus, between the beginning of the organizational campaign in early February and the election held on May 18, the Respondent violated the Act by numerous instances of interrogation of employees about their union activities and those of other unit employees as well as by numerous threats of reprisals against employees because of their union activities. Such unlawful threats included threats of discharge, plant closure,[7] loss of access to management, and insistence on contract terms unpalatable to unit employees. Furthermore, the Respondent made unlawful implied promises of benefits to employees conditioned on the employees' abandonment of the Union. And the Respondent violated the Act by telling employees that the timing of work-related warnings was caused by the existence of union activities and by threatening employees with discharge because they engaged in concerted activity. After the election, the Respondent violated the Act by threatening retaliation against an employee because of her union activity and by the coercive interrogation of an employee concerning his intended testimony before the Board.

In addition to this plethora of acts of interference, restraint, and coercion against employees, the Respondent violated Section 8(a)(3) of the Act by more rigidly enforcing company work rules for the purpose of discouraging union activities. This policy contributed directly to the discriminatory discharge of union adherent Dennis Williams. As the Administrative Law Judge pointed out, the Respondent's enforcement of this policy after the campaign began "would be the most effective way to short-circuit all such union activities."

Based on the foregoing, and the entire record in this case, we are persuaded that the Respondent's unlawful activities warrant a bargaining order under *Gissel*.[8]

AMENDED CONCLUSIONS OF LAW

Insert the following as paragraph 2 and renumber the subsequent paragraph accordingly:

"2. By coercively interrogating employees concerning their intended testimony before the Board, Respondent violated Section 8(a)(1) of the Act."

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, Standard-Coosa-Thatcher, Carpet Yarn Division, Inc., Boaz, Alabama, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:[9]

1. Insert the following as paragraph 1(d) and reletter the subsequent paragraphs accordingly:

"(d) Coercively interrogating its employees concerning their intended testimony before the Board."

2. Substitute the attached notice for that of the Administrative Law Judge.

IT IS FURTHER ORDERED that the petition in Case 10-RC-11707 be, and it hereby is, dismissed.

[7] The Board has long held that the threat of job loss through plant closure or curtailment of operations interferes with employees' ability to make a free choice in an election. Thus, the threat of plant closure is among the most effective unfair labor practices for destroying election conditions for a longer period of time than other unfair labor practices. See *Ste-Mel Signs, Inc.*, 246 NLRB 1110 (1979). See also *N.L.R.B* v. *Gissel Packing Co., Inc.*, 395 U.S. 575, 611, fn. 31 (1969).

[8] On April 20, 1981, the Respondent filed a motion to have the Board take administrative notice of a letter dated March 5, 1981, in which the Regional Director for Region 10 declined to issue a complaint concerning allegations contained in a charge in Case 10-CA-16538. In particular, the Respondent relied on a statement by the Regional Director that "[n]o evidence of animus occurring in the past six months was presented or adduced during the investigation." The Respondent goes on to claim that the Board is obligated to determine whether a fair election can be held based on conditions as they exist at the time of the Board's decision.

The General Counsel has filed a response to the Respondent's motion urging that the critical point for determining the appropriateness of a bargaining order is when the Respondent's unfair labor practices began to destroy the Union's majority status. Thus, the General Counsel contends that the March 5 letter is irrelevant to the issues before the Board.

It is our view that the validity of a bargaining order in this case and in similar cases should properly rest upon our analysis of the seriousness and pervasiveness of the unlawful conduct at the time that the conduct was first presented for our scrutiny. To conclude otherwise is "to put a premium upon continued litigation by the employer." *N.L.R.B.* v. *L. B. Foster Company*, 418 F.2d 1, 4-5 (9th Cir. 1969). See also *Gibson Products Company of Washington Parish, La., Inc.*, 185 NLRB 362 (1970). Hence, we hereby deny the Respondent's motion.

Even were we to grant the Respondent's motion and consider the letter that the Respondent seeks to introduce into the record, it would not alter our finding that a bargaining order is required to remedy the serious and extensive violations of the Act by the Respondent.

[9] In accordance with his partial dissent in *Olympic Medical Corporation*, 250 NLRB 146 (1980), Member Jenkins would award interest on the backpay due based on the formula set forth therein.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT discourage membership in Amalgamated Clothing and Textile Workers Union, AFL-CIO, CLC, or any other labor organization, by discharging any of our employees or in any other manner discriminating against them in regard to their tenure of employment or any term or condition of employment.

WE WILL NOT interrogate our employees concerning their or other employees' union activities, membership, or desires.

WE WILL NOT coercively interrogate employees concerning their intended testimony before the Board.

WE WILL NOT threaten our employees with discharge, plant closure, loss of access to management, insistence on contract terms unpalatable to them, or other unspecified reprisals because of their union activities.

WE WILL NOT promise our employees benefits conditioned on their abandonment of the Union.

WE WILL NOT tell our employees that the timing of work-related warnings was caused by the existence of union activity.

WE WILL NOT threaten employees with discharge because they engage in concerted activities protected by the National Labor Relations Act, as amended.

WE WILL NOT refuse to recognize or bargain with Amalgamated Clothing and Textile Workers Union, AFL-CIO, CLC, as the exclusive representative of all employees in the bargaining unit described below.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain collectively with Amalgamated Clothing and Textile Workers Union, AFL-CIO, CLC, as the exclusive bargaining representative of all the employees in the bargaining unit described below with respect to rates of pay, wages, hours of employment, and other conditions of employment, and, if an understanding is reached, embody that understanding in a written signed agreement. The bargaining unit is:

All production and maintenance employees employed by us at our Boaz, Alabama, facility but excluding all office clerical employees, professional employees, guards, and supervisors as defined in the Act.

WE WILL offer to Dennis Williams immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges, and WE WILL make him whole for any loss of earnings he may have suffered as a result of the discrimination against him, plus interest.

WE WILL rescind and expunge from our records all references to the four warnings issued Dennis Williams and all other warnings issued to employees on and after February 6, 1979, for violation of work rule 9 prohibiting unauthorized absence from the work area or the plant. Said work rule will be fairly enforced without unlawful discrimination.

All our employees are free to join Amalgamated Clothing and Textile Workers Union, AFL-CIO, CLC, or any other labor organization.

STANDARD-COOSA-THATCHER, CARPET YARN DIVISION, INC.

DECISION

STATEMENT OF THE CASE

CLAUDE R. WOLFE, Administrative Law Judge: This consolidated proceeding[1] was heard before me in Boaz, Alabama, on January 7-10 and February 5-7, 1980, pursuant to charges[2] and amended charges timely filed, complaint issued and properly amended, and an order directing hearing on certain objections to election filed by the Union.[3]

The complaint, as amended, alleges violations of the Act consisting of interrogation, various threats, promises of benefit, promulgation, and enforcement of a rule restricting the movements of employees, the issuance of written reprimands to an employee, the discharge of an employee, and a refusal to bargain collectively with the Union which has been designated by a majority of Re-

[1] The name of Respondent was amended at the hearing by agreement.

[2] When set for hearing this proceeding included a complaint in Case 10-CA-13462. On January 2, 1980, the United States District Court for the Northern District of Alabama issued an order that, pending the court's ultimate determination of its jurisdiction in the cause before it, the National Labor Relations Board, "its officers, agents, servants and all employees and all others acting in concert with or for it," were restrained and enjoined from holding a hearing on or adjudicating the unfair labor practice charge in Case 10-CA-13462. On January 4, the Regional Director for Region 10 issued an order severing Case 10-CA-13462. Accordingly, I refused to take evidence on the allegations of Case 10-CA-13462 when the General Counsel requested permission to adduce it as background.

[3] The objections at issue are also alleged in the complaint as unfair labor practices.

spondent's employees in an appropriate bargaining unit as the exclusive representative of all employees in that unit for purposes of collective bargaining. It is further alleged that one of Respondent's counsel unlawfully interrogated two employees.

Respondent denies the complaint allegations. The issues were ably litigated and ably briefed by all parties.

After careful consideration of the entire record, the demeanor of the witnesses as they testified before me, and the arguments and briefs of the parties, I make the following:

FINDINGS AND CONCLUSIONS[4]

I. JURISDICTION

Respondent is an Alabama corporation engaged in manufacturing yarn in Boaz, Alabama. Respondent, during the calendar year preceding the issuance of the complaint, a representative period, sold and shipped finished products valued in excess of $50,000 directly to customers located outside the State of Alabama. Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. LABOR ORGANIZATION

Amalgamated Clothing and Textile Workers Union, AFL-CIO, CLC, herein called the Union, is a labor organization within the meaning of Section 2(5) of the Act.

III. SUPERVISORS AND AGENTS

Respondent admits that the following individuals are and have been, at all times material, statutory supervisors and agents of Respondent: Earnest T. Bouldin—personnel manager; Jack Bowman—plant manager; Bennie F. (Butch) Harris—shift supervisor; Bill King—shift supervisor; Cecil King—shift supervisor; and Frank Lowery—shift supervisor.

Respondent further admits that Richard Thatcher is a director of Respondent. He testified he is Respondent's president, and I find he is its officer and agent. The parties stipulated that Mark Maddox is an agent of Respondent, and it is clear he is the industrial relations director.

IV. UNFAIR LABOR PRACTICES AND OBJECTIONS TO THE ELECTION

Preface

I have made some findings herein of unfair labor practices not specifically alleged or alleged to have occurred on dates other than those pleaded. It is well settled that violations not alleged in the complaint may be found where they are closely related to allegations in the complaint and have been fully litigated.[5] All violations found are indeed related, "if not in actuality falling within,"[6] complaint allegations and were fully litigated. Respondent was not denied due process in any way, and the referred to violations were properly found.[7] Moreover, I am not precluded from finding violations on alternative theories not alleged.[8]

A. *General Context*

The Union conducted a campaign among Respondent's employees commencing in July or August 1977 and culminating in a Board-conducted election on December 9, 1977, which the Union lost. There was no union organizational campaign in 1978.

On or about February 6, 1979,[9] John Kissack, who was then the assistant southern director for the Union, conducted a meeting with several of Respondent's employees. At their request, he agreed to commence another campaign. He advised these employees that the Union did not want authorization cards anyone signed only to have an election, and that signers should understand they were signing to have a union and their cards might be used to show they wanted the Union.

Within a day or two of this meeting, Union International Representative Virginia Keyser gave employees authorization cards for the purpose of their solicitation of other employees. The cards are unambiguous designations of the Union as the signer's collective-bargaining representative.[10]

Between March 21 and April 1, 1979, there were 147 employees in a unit of Respondent's employees alleged and admitted to be appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act.[11] The General Counsel placed 88 authorization cards in the record which were signed by unit employees on various dates from February 8 through March 17. Respondent specifically contests the validity of 20 of these cards.

On March 20, the Union filed a petition for representation election in Case 10-RC-11707, and the next day, March 21, made an unequivocal demand for recognition and bargaining.[12] Respondent agrees this demand was re-

[4] The facts found herein are a distillation of credible testimony, the exhibits, and stipulations of fact, viewed in the light of logical consistency and inherent probability. Although I will not in the course of this decision refer to every bit of record testimony or documentary evidence, I have weighed and considered it. To the extent that any testimony or other evidence not mentioned might appear to contradict my findings of fact, I have not disregarded that evidence but have rejected it as incredible, lacking in probative worth, surplusage, or irrelevant. I will set forth certain specific credibility findings as they may be required.

[5] *C & E Stores, Inc., C & E Supervalue Division*, 221 NLRB 1321, fn. 3 (1976).

[6] *Omark-CCI, Inc.*, 208 NLRB 469 (1974).

[7] See, e.g., *The Estate of Alfred Kaskel d/b/a Doral Hotel and Country Club*, 240 NLRB 1112, fn. 4 (1979).

[8] *Joint Industry Board of the Electoral Industry and Pension Committee, et al.*, 238 NLRB 1398, fn. 8 (1978); *C & E Stores, supra.*

[9] All events hereinafter recited occurred in 1979, unless otherwise stated.

[10] [The language of the cards is omitted from publication.]

[11] The appropriate unit description is:

> All production and maintenance employees employed by Respondent at its Boaz, Alabama, facility but excluding all office clerical employees, professional employees, guards, and supervisors as defined in the Act.

[12] The telegram reads:

> The majority of production and maintenance employees of your plant have chosen ACTWU as their bargaining agent. We are prepared to prove this majority. We call upon the company to commence negotiations on hours, wages and working conditions.

ceived, and that it has refused to bargain with the Union since March 21. Thereafter, the parties executed a Stipulation for Certification Upon Consent Election on April 10 and a secret-ballot election was held on May 18. The Union lost and filed objections to the election, certain of which are now before me for resolution.

B. *Challenged Authorization Cards—Authorization Cards Allegedly Secured by Misrepresentation*

Respondent contends that authorization cards signed by the following employees may not be counted toward a union majority because they were secured by misrepresentation:

Ronald Bankston	Neil Langston
Jackie Collins	Richard Lybrand
James Collins	Lawrence Parker
Michael Dobbins	Robert H. Simpson
Pat Hand	Mary Frances Smith
Jan Harris	Wanda Windsor
Danny Hayes	

In evaluating the validity of each of these questioned cards, I have been guided by the following teachings of the Supreme Court with respect to alleged misrepresentations in securing signatures to union authorization cards:

> [E]mployees should be bound by the clear language of what they sign unless that language is deliberately and clearly canceled by a union adherent with words calculated to direct the signer to disregard and forget the language above his signature. There is nothing inconsistent in handing an employee a card that says the signer authorizes the union to represent him and then telling him that the card will probably be used first to get an election. Elections have been, after all, and will continue to be, held in the vast majority of cases; the union will still have to have the signatures of 30% of the employees when an employer rejects a bargaining demand and insists that the union seek an election. We cannot agree . . . that employees as a rule are too unsophisticated to be bound by what they sign unless expressly told that their act of signing represents something else . . . in hearing testimony concerning a card challenge, trial examiners should not neglect their obligation to ensure employee free choice by a too easy mechanical application of the . . . rule. We also accept the observation that employees are more likely than not, many months after a card drive and in response to questions by company counsel, to give testimony damaging to the union . . . .[13]

Ronald Bankston signed an authorization card on March 13. He read it before he signed it. Prior to his signing he had attended a union meeting where it was explained the cards were to join the Union and to get it into the plant. When he signed the card at the solicitation of Betty Underwood and an accompanying union representative he was told that employees would probably have better working conditions, and Underwood told him the card was needed to have an election and only a few more were needed. Bankston clearly knew prior to his signing that the card could be used for purposes other than to get an election. He read it before he signed, and I am satisfied he was not directed to disregard the express language thereon or was otherwise assured that it would be used only for an election. I find his card is valid.

Jackie Collins testified that, when he signed a card on March 13, Betty Underwood told him they only lacked a few cards to hold an election to get the Union in and that his card would be destroyed and no one would ever know he signed it. He avers he "looked over" the card but did not read it thoroughly.

> [T]here is nothing in the circumstances surrounding the solicitation of the card to indicate he was assured that the card would be used for no purpose other than to get an election. The absence of evidence indicating that [Collins] read the entire card does not . . . compel a conclusion that he did not intend to designate the Union as a collective-bargaining representative.[14]

Indeed, a purpose communicated to him was to get the Union in by means of an election. The promise to keep the card and destroy it at some unspecified time does not operate to destroy its validity.[15] I shall count his card.

James Collins signed a card on February 16 at the solicitation of Betty Underwood. He had seen the cards in prior campaigns and testifies that Underwood asked him to sign a card, and then, after he returned it, told him it was just to get an election. I am persuaded by the sequence in his account that the election factor was mentioned after he signed. That being the case, I cannot conclude that his signature was induced by Underwood's alleged election statement. He did not read the card before signing, but this does not establish he did not know what it contained inasmuch as he had seen such cards in other years and does not claim ignorance of its contents. I conclude that, since he signed the card before Underwood mentioned an election, her statement was not an inducement to sign. I find the card is valid.

Michael Dobbins signed a card on February 25 at the solicitation of Bobby Joe King. He signed a card in 1977 during an earlier campaign, and there is no showing he was not aware of its contents. Assuming as he claims that he did not read the 1979 card it therefore follows that it does not require a finding that he was unaware of the card's content. Before he signed the card, King told Dobbins that he thought the Union would help them and that a union would improve working conditions. King also told Dobbins that he was trying to get enough cards signed for a union election at the plant. I find nothing in King's statements amounting to an assurance that the

[13] *N.L.R.B.* v. *Gissel Packing Co., Inc.*, 395 U.S. 575, 606-608 (1969); and see *Jeffrey Manufacturing Division, Dresser Industries Inc.*, 248 NLRB 155 (1980), and *Keystone Pretzel Bakery, Inc.*, 242 NLRB 492 (1979).

[14] *Jeffrey Manufacturing Division, supra.*

[15] *General Steel Products, Inc., and Crown Flex of North Carolina, Inc.*, 157 NLRB 636, 645 (1966).

card would only be used for an election, and I shall count it.

Patricia Hand signed a card on February 16 at the behest of Sheila Whitehead who told her it was to get an election. Although Hand claims she did not read the card, I am convinced she was aware of its contents in view of her testimony that she had solicited employees to sign cards in 1977 which looked the same as the 1979 cards. A statement of the sort attributed to Whitehead does not invalidate the card, and I shall count it.

Jan Harris signed a card on February 16. Betty Underwood, who solicited it, told Harris the card was for an election. Harris says she did not read the card, but I find this unlikely inasmuch as she filled out all of the spaces on the card but for that reserved for a witness thereto. In any event she was not told anything that would reasonably lead her to believe the language on the card would be used only for an election. Therefore, I find her card is valid.

Danny Hayes filled out and signed a card on February 11. He testified that Joe Whitehead gave him the card and said it was for an election, but he had earlier had a conversation with Whitehead in which Whitehead said, "Sign the blue card so we can get an election, get the Union in the mill," thus clearly indicating a purpose of the card was to secure a union. There is no evidence Hayes did not read the card, and I conclude he is bound by the language thereon. I shall count his card.

Neal Langston had signed cards in previous elections, and I therefore find he was cognizant of the content of the one he signed on March 8 even though he may not have then read it. I observed card solicitor Patricia King to be a more candid and believable witness than Langston, whose testimony was internally inconsistent,[16] and I find that she did not mention an election to him when securing the signed card. Accordingly, I shall count it.

Richard Lybrand signed a card on March 16 for Betty Underwood. I credit Lybrand that he did not read the card and Underwood told him it was "just for an election." I therefore find his card is invalid as obtained in reliance on Underwood's misrepresentation of its purpose, and I shall not count it.

Lawrence Parker signed a card at his home on February 20 during a meeting with Bobby Joe King, Joe Whitehead, and Kenneth Jones in which working conditions were discussed. Either King or Whitehead asked if he would sign a card, and he did. He was told the card was to get a union election, but there is no evidence he did not read it or was unaware of its contents. That Parker may not have been specifically told the card's purposes other than to secure an election does not controvert the express language of the card, and I shall count it.

Robert H. Simpson read a card and signed it on February 16. Although he testified it was his assumption the card was for an election, he concedes that he cannot remember if the card solicitors told him that was the purpose of the card. Nothing probative having been proffered to invalidate Simpson's card, I shall count it.

Mary Frances Smith read, completed, and signed a card on February 14. Her testimony that Betty Underwood told her they were trying to get enough cards for an election does not affect the validity of her card, and I shall count it.

Wanda Winsor completed and signed a card on March 17. She states she was told by the solicitors that the card "would give a chance for the Union to come in there, to hold our election." There is nothing in her testimony to warrant a conclusion her signature was obtained by misrepresentation, and I shall count it.

Delora Copeland, Vera Garrard, and Elbert Havis

Respondent asserts that the signatures of Copeland and Garrard on union cards have not been authenticated, the primary reason being that they do not resemble those on various company documents signed by them, pursuant to Federal Rule 901(b)(3). I have compared the signatures on the cards allegedly signed by Copeland and Garrard with the signatures on documents proffered by Respondent for comparison purposes. My examination convinces me that Copeland and Garrard did indeed sign the authorization cards which were received in evidence and properly authenticated by the solicitor thereof. They are both valid cards.

Jimmy M. Hopper gave Elbert Havis an authorization card in early February. Havis, who has considerable difficulty writing his own name either legibly or correctly spelled, took the card home. His wife signed it with his name and filled out the rest of the card, including the date of February 14. Havis returned the card to Hopper the next day. The fact that Havis went to the trouble he did to complete a card and return it to the solicitor persuades me his act was intentional and he knew what he was signing. Moreover, I do not believe his wife would have signed it for him had he not wished her to. There is no showing that the purpose of the card was either unknown to him or inadequately communicated to him, and I cannot conclude, as Respondent would have me do, that because Havis does not write well he cannot read. I find that Havis' card is a valid designation of the Union, and I shall count it towards the Union's majority.

Gloria Stanfield, Mary Hornbuckle, Bonnie Caswell, and Glenda Finley

The validity of the authorization cards signed by these four employees is challenged on the ground they were signed prior to the union campaign which commenced on or about February 6, 1979.

With respect to Stanfield's card, employee Betty Underwood testified that she was present when Stanfield signed it on March 13, 1979, at the water fountain in the spinning room.

Stanfield states she signed the card in 1978, a couple of months after the December 1977 election, and gave it to Nellie Cook.[17] She avers that she was asked to sign a

[16] He first testified that King told him nothing about the card, but then went on to say that King asked him to sign because they needed cards to get an election whereupon he told her he would sign it so there could be an election.

[17] Cook did not testify.

card a couple of times by Underwood, but does not say when or where.

The date on Stanfield's card appears to have been changed from "78" to "79." It is impossible to tell whose handwriting is involved in this alteration, but the remainder of the front of the card, but for Underwood's initials as the receiver and "S.C.T." in the company name space, was completed by Stanfield. Underwood wrote the location of the signing on the back of the card, dated it March 13, 1979, and signed her name.

I observed Underwood to be a more believable witness on the subject of Stanfield's card than Stanfield, and I note there was no union campaign in 1978.[18] March 13 is a date falling in the midst of the 1979 campaign, and the front and back of the card appear to have been completed with the same pen. Whether the date was changed due to initial error by Stanfield or Underwood is not certain beyond the shadow of a doubt, but I conclude it is more likely than not that the date originally entered by Stanfield was in error and that she or Underwood corrected it. I am persuaded that the General Counsel has met his burden of proof in validating the card by a preponderance of the evidence, and that it is most probable the card was signed on March 13, 1979, rather than 1978. I credit Underwood that it was and find it to be a valid union authorization executed March 13, 1979.

Mary Hornbuckle's card is dated "2-16-79." It appears that the "79" has been changed, but it is not clear on the card itself what the year read before alteration.[19] Hornbuckle testified she signed the card for Betty Underwood in 1977, and did not sign one in 1979. Hornbuckle did not remember where she was when she signed it, where Underwood was when she gave the card to Hornbuckle, whether other employees were signing cards or distributing cards or union literature at the gate about the time she signed it, or when she signed the card in relation to a home visit from Underwood and Bobby Joe King prior to the signing.

Underwood states Hornbuckle signed the card in her presence on February 16, 1979, and that Underwood completed the rest of the card, changing the date to 1979 after she had erroneously written 1978. She attributes this error to her inadvertence in continuing to write 1978 on various documents for a time after the beginning of 1979. Underwood further avers that she witnessed and dated the card "2-16-79" on the reverse side, and her signature and "2-16-79" do appear there. According to Underwood, she had talked to Hornbuckle with respect to the 1977 election but not again until she secured the signed card in issue. I credit Underwood and shall count the card.

Contrary to Respondent, the date on Bonnie Caswell's card is not altered and clearly reads "2-9-1979." Caswell does not claim any alteration in the date, but contends it is in error because she did not sign a card for the 1979 election. She does not remember who gave her the card or to whom she returned it, states she does not know if handwriting on the card other than her signature is hers, and does not know whether she signed the card before or after December 1977. Underwood testified that Caswell signed the card in her presence on February 9, 1979. I credit Underwood and shall count Caswell's card.

Glenda Finley's card date has been altered from February 26, 1978, to 1979. Finley says she signed the card in 1978 after Patricia Hand gave her the card in the parking lot and asked her to sign it. According to Finley, Hand asked her several times to sign and told her it was to try to get another election. Finley filled out all entries on the front of the card. Underwood testified that Finley signed the card in her presence in the Boaz Mall on February 26, 1979. Hand says that Finley signed a card for her in February 1977, before the December 1977 election, in the parking lot, but Hand was not shown the specific card in issue when she testified. I do not believe the card before me is the same one Hand is referring to because, although it may be that Hand obtained a card from Finley before the December 1977 election, it is plain that the changed entry was "1978," not "1977." As heretofore noted, there was no organizing campaign in 1978, and I do not credit Finley that she signed the card in 1978. I conclude that she signed the card in 1979, as Underwood testified and noted on the back of the card, but wrote "78" by inadvertence. The mere correction of the date by her or Underwood does not destroy its validity. I shall count it as a valid authorization card for purposes of ascertaining the Union's majority in 1979.

In view of my findings above, I conclude that the Union represented a majority of Respondent's employees in the unit found herein when it requested and was refused recognition as exclusive bargaining representative of said employees on March 21.[20]

C. *Independent Violations of Section 8(a)(1) of the Act*

Preliminarily, I credit Patricia Whisenant's testimony that on her hire in September 1978 she was told by Personnel Manager Earnest Bouldin that the Company did not want a union and it would not be good for the Company or its employees. This statement occurred more than 6 months prior to the filing of the first charge in Case 10-CA-14634, and therefore may not be found to be an unfair labor practice. It may, by long-established precedent, be considered as background evidence shedding light on events within the statutory period.[21]

[18] The evidence so shows, and Respondent agrees in its post-trial brief that there was no organizing campaign between December 9, 1977, and February 6, 1979.

[19] Although the Union argues that the underlying number was "78," I do not believe from my careful examination of the card that a mere visual observation can confidently determine whether "78" or "77," or even "79," was first written down.

[20] I have found 19 of the 20 cards challenged by Respondent valid. The remaining 68 cards were properly identified and authenticated on the record and may therefore be relied on as evidence of the Union's majority status. In all 87 of 147 employees signed cards, a clear majority, by March 17, and a simple majority of 74 valid cards was secured by the Union on February 20.

[21] *Local Lodge No. 1424, International Association of Machinists, AFL-CIO, et al. [Bryan Manufacturing Co.] v. N.L.R.B.*, 362 U.S. 411, 416 (1960).

1. Conduct of Supervisor Bennie F. (Butch) Harris

(a) On or about February 13, Harris took Kathy Cahela Holland from her work station to the nurse's station and locked the door behind them. I credit Holland's account of what then happened over that of Harris because she was the more impressive witness, and for the further reason that as a current employee she would not likely deliberately fabricate testimony injurious to her employer who controlled her employment future.[22] I also note that Harris concedes he was trying to find out if Holland was still prounion.

Holland asked what she had done. Harris replied she had done nothing and he just wanted to know why she wanted a union. She gave reasons and they then engaged in colloquy as to what the Union could do about seniority. Harris then opined that they would all be out of a job if the Union got in at Boaz. She disagreed and asked why he thought that. He said that the Company would combine the Boaz and Guntersville[23] employees and close the Boaz plant. She stated her disbelief, and Harris said he knew it was true, had seen it in black and white, and was fearful he would also lose his job.

I find that Harris violated Section 8(a)(1) of the Act by interrogating Holland about her union desires and threatening plant closure with resulting loss of jobs if the Union got in at Boaz. This conduct was made even more coercive by the context in which it occurred, mandatory attendance in a locked room.

(b) In mid-February, Harris took Patricia Whisenant off her job and into his office where he locked the door and they conversed.[24] Harris showed her an enlargement of a union card and asked her either if she had seen one or if she knew what it was. She replied that she had not and did not. Harris told her that he knew she had signed a card and asked why she had signed, coupling this inquiry with a statement that by signing the card she had signed away her rights to the Union. Harris concedes he told Whisenant that there was a union at Guntersville, and I find also that he also said that the employees would be no better off at Boaz than at Guntersville and that the Guntersville union president had traded employees' grievances for a pay increase. He went on that she would have to go to a union steward rather than the Company personally and that the Company would close the plant if the Union got in. I find that Harris interrogated Whisenant about her union activity by asking why she signed a card, threatened her with loss of access to management,[25] and threatened plant closure, all individually and collectively violative of Section 8(a)(1) of the Act. I also find that such conduct is particularly coercive when delivered in the privacy of the supervisor's locked office to which the employee was peremptorily summoned.

(c) Timothy White testified that Harris walked up to him in mid-March and said that, if the Union came in, the bench White sat on to rest in his work area would be taken away and if employees overstayed a break by 1 minute Harris would issue warning slips to them. Harris denies making these statements. Although I do not credit Harris on other matters I do credit him here. The credible evidence establishes to my satisfaction that there was in fact no such bench in White's work area, and White's testimony struck me as contrived evidence given in an unconvincing manner. Accordingly, the General Counsel's evidence on this allegation does not preponderate, and I shall recommend that it be dismissed.

(d) Timothy White testified to certain events on or about May 8. According to White, he was called into Plant Manager Jack Bowman's office where, in the presence of employee James Collins and possibly Personnel Manager Earnest Bouldin, Bowman said that White had filed a charge against the Company. White avers he denied this and Bowman showed him the charge filed on May 4, 1979, in Case 10-CA-14634 by the Union which contains the names of Collins and White as alleged discriminatees.[26] White continues that Bowman gave him a copy of the charge whereupon White asked how he could find out more about it and received the answer it would have to be investigated. Later the same day, says White, he went into Harris' office to report on work as usual, and Harris asked why he filed the charge, which he denied. Harris then allegedly stated that he had had a lot of reasons to fine White, and that he could tell White was union, "that it showed."

Harris' version is in substance as follows. White and James Collins asked him about a charge being filed. He then told them he had seen it, and they said they filed no charges against him and did not know how it had happened. They asked who would have filed the charges besides them, and he said he did not know. Harris then went and told Bowman that White and Collins knew nothing about the charge, had not filed them, and had not signed anything. Bowman offered to show it to them. Harris went and got them. Bowman showed them the May 4 charge and was unable to explain to them how their names came to be on the charge. White and Collins asked who to see to find out about it, and Bowman referred them to the name and address on the charge. I conclude Bowman was pointing out the name and address of the Charging Party.

Harris denies any later conversation with White about the Union or making the statements White claims he made in his office later in the shift.

Neither Bowman, Bouldin, nor James Collins testified about this incident. The absence of their testimony leaves a straight credibility conflict on significant points between Harris and White. I doubt that Bowman would have summoned White to the office for the purpose of accusing him of filing a charge plainly showing the Union as the Charging Party, and note there is no contention Bowman similarly accused Collins whose name precedes that of White in the body of the charge. More-

[22] See, e.g., *Staco, Inc.*, 244 NLRB 461 (1979).

[23] Respondent has a plant at nearby Guntersville, Alabama, which is covered by a union contract.

[24] I credit Whisenant where her account and that of Harris differ. She was a more believable witness in terms of comparative demeanor. In this connection, I specifically note that Harris appeared to be uncertain and reluctant on this incident whereas Whisenant did not.

[25] *Sacramento Clinical Laboratory, Inc.*, 242 NLRB 944 (1979); and see *Colony Printing and Labeling, Inc.*, 249 NLRB 223 (1980).

[26] The complaint herein does not so allege.

over, I do not believe it probable that Harris would later have inquired why White filed a charge which he had already denied filing. On the whole, the testimony both of Harris and White leaves something to be desired in terms of exactitude, but that of Harris appeared to be delivered in a less tentative manner and with greater assurance. In short, I observed Harris to be more believable on the events of May 8, and I credit his affirmative testimony as well as his denials of the statements attributed to him by White. Accordingly, I find that the General Counsel has not shown by a preponderance of the credible evidence that Harris made unlawful statements on May 8 as alleged.

(e) I credit Patricia Whisenant that, on May 21, Harris walked up to her and asked where her "god-damn" union was and, after she replied it was coming and they were going to court, further stated that she was not satisfied getting in as deep as she was but just kept on getting in deeper and deeper.

I am persuaded that Harris' question and commentary emphasized that Respondent strongly disapproved of the Union and Whisenant's activity on its behalf, and conveyed that she was in deep trouble with Respondent, and getting deeper, because of that activity. Harris' statements were clearly calculated to make Whisenant fearful of Respondent's reaction to her protected union activities which it viewed in an unfavorable light. I therefore find that Harris threatened Whisenant in violation of Section 8(a)(1) of the Act. That he did not specify what Respondent's retaliation might be does not diminish the seriousness of the threat.

2. Conversation of employee Leon Taylor with Personnel Manager Bouldin and Shift Supervisor Cecil King

Around the first of May, Taylor, who has since quit due to health problems, had been complaining that his workload on his second-shift yarn service job was too heavy. Unbeknownst to Taylor, Respondent had commenced a new timestudy on the yarn service job but had not as yet reached his shift. I credit Bouldin that the timestudy was motivated by the movement of machinery and find that neither antiunion considerations nor Taylor's complaining precipitated it.

During the first week in May, Bouldin approached him and said he had heard Taylor was complaining about his job. Taylor replied that he had too big a workload. Taylor testified on direct examination that Bouldin then said employees would not have any additional benefits if the Union came in, and mentioned the Guntersville plant. On cross-examination Taylor stated that he does not recall what Bouldin said after Taylor responded to Bouldin's initial question about his complaint, and further stated that he believed Bouldin's response to his complaint of too much work was all that was said. Bouldin testified that after Taylor said he was overloaded he (Bouldin) advised him of the timestudy on the first shift which would soon be extended to the second shift. Bouldin denied that either the Union, benefits, or trouble for Taylor were mentioned during this conversation than Taylor who delivered his testimony in an uncertain manner, obviously contradicted his own direct testimony on cross-examination, and was not a convincing witness. I therefore credit Bouldin and find that he did not, as the General Counsel alleges, unlawfully threaten Taylor or otherwise violated Section 8(a)(1) of the Act by his statements to Taylor.

Taylor testified to a conversation with Cecil King, at or about the same time period as that with Bouldin, wherein King told him that first-shift jobs had been timed and his job was going to be timed next, and then said that the Union would do him no good if it came in.

According to Taylor, he had another conversation with King about a week later when King called him into his office and told him he did not know what Joe Whitehead (an active union proponent) was putting in Taylor's head but the Union would not help Taylor, or get him anymore benefits, or reduce his job duties. Taylor avers that King added that if Taylor did not keep his job up he might be fired. In response to my question, Taylor placed this conversation before the May 18 election. On cross-examination he first placed it *before* the election. Then, when confronted with his pretrial affidavit given to the Board, conceded that he had said therein the conversation occurred in the last week of May (which was *after* the election), and stated his affidavit, given on June 10, 1979, was truthful. Unaccountably, Taylor then again testified that the conversation happened *before* the election, but also reiterated that his affidavit was truthful.

Cecil King testified that Taylor complained to him on various occasions that he had too much work to do, and received help from King. King denies any discussion of the Union during these conversations about Taylor's job. King did recall an occasion, approximately between May 8 and 11, when Taylor came to his office, told him Whitehead was pressuring him to sign a union card, and asked King what he thought about the Union. According to King, he told Taylor what the existing company benefits were, that if the Union came in more benefits would have to be bargained for, and that King did not think the Union would help at Boaz. King denies informing Taylor he would lose benefits if the Union came in.

Taylor did not impress me as a candid or reliable witness as he testified in an uncertain and unconvincing manner. I do not credit his testimony, and I do credit the version of King who testified in a straightforward, believable manner. I find that none of Cecil King's statements to Leon Taylor transgressed Section 8(a)(1) of the Act.

3. Statements of Personnel Manager Bouldin

(a) On a Saturday afternoon in mid-February, Bouldin was having his car serviced, and walked toward the adjacent Holiday Inn to have some coffee. Patricia Whisenant, who was parked in the Holiday Inn lot conversing with employee Jesse Roden who sat in another car next to hers, saw Bouldin and became apprehensive that Bouldin would think she and Roden were having an affair rather than waiting to meet union organizers. She called Bouldin to her car, as Roden drove off, and told him that she was not there for a liaison with Roden. From this point the accounts of Bouldin and Whisenant differ.

Whisenant's Version

Bouldin told her that he knew she was there to see union people and that if she did not watch it she would get in trouble, and she should be back at work. They talked longer but she does not recall what was said. About 10 minutes later she saw him in the coffeeshop. Two friends, Finley and Lemons (neither of whom testified on this matter), went in to talk to Bouldin. One returned and told Whisenant that Bouldin wanted her to come in. She went in, does not remember everything that was said, but knows Bouldin and the employees talked about the Union and the presence of its organizers. She recalls that Finley or Lemons said it was Kathy Cahela's fault, not Whisenant's, that Whisenant was at the Holiday Inn.

Bouldin's Version

He replied to Whisenant's remarks about her relationship with Roden by saying it was her business. He went inside the coffeeshop. Whisenant, Lemons, and Finley came in 5 or 10 minutes later. Whisenant again explained that her meeting with Roden was not what it looked like, and said that they were there to see a piece of paper that employee Betty Underwood possessed. They all then left. There was no conversation with Whisenant about the Union and no mention of people being in trouble.

But for Whisenant's concern that her relationship with Roden might be misconstrued, the parking lot conversation would probably not have occurred. Bouldin was on his way to get coffee and his attention was drawn to Whisenant by her calling him over. I am persuaded that Bouldin's presence at the Holiday Inn has not been shown to have been prompted by any reason other than chance and a hankering for a cup of coffee. Whisenant's recitation struck me as manufactured to capitalize on the unexpected presence of Bouldin, and I do not credit her that Bouldin told her he knew she was there to see union people,[27] that she would get in trouble if she did not watch out, or that she should return to work. Nor do I credit her, in the absence of any corroboration, that Bouldin sat talking about the Union and its organizers with the three employees. I credit Bouldin's account because he was the more believable witness with respect to the events of this day and because his account seems the more likely to me to the extent that it reflects that the topic of discussion was the true import of Whisenant's meeting with Roden, rather than some meeting with union organizers which has not in fact been convincingly shown to have occurred or even been scheduled. The General Counsel has not shown by a preponderance of the credible evidence that Bouldin violated the Act in any fashion on this occasion.

(b) I credit Whisenant's testimony that some time in mid-February she was talking to Bouldin when Kathy Cahela Holland walked by without speaking and Whisenant told Bouldin, when he asked what was wrong with Holland, that Holland was involved in the "Union business," to which Bouldin stated that if Holland did not watch it she would get fired. This statement by Bouldin, in the context in which it was uttered, was a threat of discharge for union activity and violated Section 8(a)(1) of the Act.

(c) In early or mid-March, after Bouldin had advised her that she was not getting a job she had applied for, Whisenant became emotionally upset and told Bouldin, "[Y]ou just hate me." He replied that he would like her a lot more if she was on the right side, a transparent reference to her prounion posture. Bouldin does not directly deny this testimony and I credit Whisenant.[28] Nevertheless, I do not agree with the General Counsel that Bouldin's statement was a threat advising Whisenant that benefits were contingent upon her being opposed to the Union.

Bouldin's statement certainly made it clear that he knew or believed she was for the Union, but I discern no element of threat in the statement. I do find, however, that Bouldin's comment reasonably tended to convey to Whisenant that she would be in Bouldin's good graces were she against the Union. It seems to me that this was an invitation to abandon the Union in order to obtain whatever benefits might flow from the improved relationship with management thereby obtained. I find this to be interference with Whisenant's union activities and violative of Section 8(a)(1) of the Act.

(d) I do not credit Martha Houchin White, an uncertain and unimpressive witness,[29] that, in mid-March while she thinks she was changing her insurance, Bouldin said:

> Just something about the union; if I knew who was union—who was company. He was telling me that if the union came in that they would take all of the benches out of the smoking areas throughout the plant.

This testimony consists of conclusions bereft of adequate specificity. Bouldin's testimony in contravention impressed me as more believable. Accordingly, I find that Bouldin did not on this occasion unlawfully interrogate or threaten Martha Houchin White as the General Counsel alleges.

(e) Martha Houchin White testified that, in mid-April during a conversation whose start she does not remember, Bouldin and Plant Superintendent Jack Bowman, which one she does not recall, told her that if the Union came in it would[30] be a while before employees got a raise and they might lose some vacations and insurance benefits.

Bowman, a methodical and precise witness who testified without hesitation, avers that White asked to talk to

[27] I agree with Respondent that there is no evidence, or even a fair inference or warranted suspicion, that Bouldin had any reason to believe or assert that Whisenant was in the parking lot to meet with anyone other than Roden.

[28] I do not consider Bouldin's bare denial that he ever indicated to Whisenant that she had a better likelihood of getting the job she applied for if she was on the right side as an adequate response to Whisenant's specific testimony.

[29] White was discharged by Respondent for falsifying her age on her job application. Both the discharge and the falsification are relevant factors in evaluating her credibility, but I would not credit her on demeanor alone if these factors were not present.

[30] She conceded on cross-examination that she does not recall whether they said "would" or "might" with respect to the raise.

him and Bouldin while they were in her area. They agreed. White asked if it were true employees could lose certain benefits if the Union came in. Bouldin started to respond,[31] but Bowman interrupted and told her Respondent was not saying she would lose anything if the Union won the election, but if it won there would have to be negotiations where she could get a little more, remain the same, or lose some. He named several benefits of which this would be true, with unknown results until negotiations were complete. He also mentioned that the negotiations at Respondent's Guntersville plant had taken about a year, but Respondent did not know how long negotiations would take, maybe a short time or maybe quite some time.

I credit Bowman's version on the basis of comparative demeanor, certainty of testimony, and believable detail. I am inclined to the conclusion that White misconstrued what was actually said and testified to this misconstruction. I conclude and find the General Counsel has not shown by a preponderance of the credible evidence that Respondent violated Section 8(a)(1) of the Act during this mid-April conversation. *Belcher Towing Company*, 238 NLRB 446 (1978); *Wex-Tex of Headland, Inc.*, 236 NLRB 1001, 1004 (1978).

(f) I credit Patricia Whisenant's straightforward recitation that she went up to Bouldin on May 17 and told him she was sorry that she had to work against him in the Union and that she would be on the gates the next morning.[32] Bouldin asked what the Company had done to her and what did she have against the Company. She told him, "Nothing." He then asked why she was working for the Union, and she replied that she believed in it. Such inquiry into Whisenant's reasons for supporting the Union tended to coerce her in the exercise of her Section 7 rights, even though she had openly declared her union adherence. I therefore conclude that Bouldin's probing into Whisenant's motives for supporting the Union constituted coercive interrogation in violation of Section 8(a)(1) of the Act.[33]

4. More conversations of Plant Manager Jack Bowman with employees

(a) On or about May 11, Bowman and Patricia Whisenant had a conversation at work.[34] Whisenant had a union leaflet in her possession which recited that a company could not unilaterally discontinue employee benefits after a union wins a Board election.[35] Whisenant asked Bowman if employee Bowman acknowledged that the leaflet was correct and continued that after negotiations commenced benefits could go up or down or remain the same. He also mentioned that negotiations at Respondent's Guntersville plant had taken about a year and it was an unknown as to how long negotiations would last but they could take a short time or a long time. He further stated that negotiations would start at zero. After Bowman's comments, Whisenant said she knew he was not lying and left the area.

Noting that Bowman's comments were generated by Whisenant's inquiry, I am persuaded that his remarks were designed to advise Whisenant of the various possibilities with respect to benefits which might result from negotiations. He neither predicted nor threatened adverse consequences with respect to benefits. I find his comments with respect to the possibility that benefits might be reduced as a result of negotiations were protected observations under Section 8(c) of the Act, and did not violate Section 8(a)(1) of the Act. *Wex-Tex of Headland, supra.*

(b) Although the testimony of Kathy Cahela Holland is entitled to considerable deference where it is adverse to her current employer, Respondent, she appeared to be straining and attempting to embellish the events of May 18, when she and Bowman had a conversation. Bowman was more believable than Holland with respect to this conversation. I credit him, and I find that on the morning of May 18, before the election, Holland commenced a conversation with Bowman by saying that she had read a copy of the Guntersville contract and could find nothing in it which would benefit employees. Bowman then told her that he wanted her to understand that the Guntersville contract was the first thing Respondent's lawyer would insist on in negotiations if Respondent lost the election.

I agree with Respondent that Bowman's testimony does not establish that Respondent would not bargain in good faith with the Union, but that is not the question. The question is whether Bowman's statement to Holland was a threat that Respondent would not bargain in good faith with the Union if it was selected. I believe this question requires an affirmative answer. The Respondent's argument that Bowman only referred to Respondent's "initial" position in bargaining adroitly attempts to resolve the issue through semantical argument. I do not believe that Holland was required to know or suspect or even hazard a guess that Respondent's first insistence on the Guntersville contract terms was not immutable. The burden was on Bowman to explain this if it were true. I find that the statements of Bowman had a reasonable tendency to impress on Holland that Respondent would insist on the terms of its Guntersville contract as a condition of a Boaz contract and thus render bargaining a futile exercise insofar as achievement of employee goals

[31] I do not credit Bouldin that he had no conversation with White about the Union or benefits after his mid-March conversation. What he said is unknown, but, to the extent he was a party to this conversation, his claim of no such talks is discredited.

[32] She had previously distributed literature at Respondent's gate.

[33] *ITT Automotive Electrical Products Division*, 231 NLRB 878 (1977).

[34] The recitation of what was said is a composite of the credited portions of the testimony of each. I am persuaded that what is here present is a failure of communication. Bowman's recitation is consistent with what he had earlier told Martha Houchin White with regard to the fate of benefits if the Union won the election. Whisenant's version appears to be, in large part, her subjective understanding of the meaning of what Bowman said rather than an accurate report as to what he actually said. I credit Bowman, where there is testimonial conflict with Whisenant, because he appeared the more certain and candid of the two.

[35] Respondent introduced this document in evidence. It bears the Union's logo and recites, with supporting excerpts from Board cases, that benefits may not be taken from employees as punishment for their union activities. Union International Representative Virginia Keyser testified that although this is a stock union leaflet it was not used in the 1979 campaign. Whisenant was uncertain as to whether or not she had the leaflet with her. Whether the leaflet was distributed during the 1979 campaign or at an earlier time does not determine whether or not Whisenant had it in her possession. I credit Bowman that she did.

was concerned. That the statements were made within hours of the upcoming Board election and were directed at an employee who Respondent knew considered the Guntersville contract of no benefit to Boaz employees increased their impact. I conclude that Bowman's threat of insistence on unpalatable contract terms interfered with, restrained, and coerced Holland in the exercise of her Section 7 rights, including the right to freely cast a ballot in a Board election without being intimidated by Respondent in the exercise of that franchise, and thus violated Section 8(a)(1) of the Act. There is no credible evidence Bowman unlawfully interrogated Holland.

5. Conduct of Shift Supervisor Frank Lowery

(a) On February 25, 1979, Lowery called employee Melinda Kennedy from her work into his office. Lowery concedes that he asked Kennedy if she had seen one of the union authorization cards and did she know what she was signing when she signed one of them. This compound question by a supervisor in a locus of supervisory authority away from the employee's work station constituted coercive interrogation of Kennedy with respect to her protected activity of signing a union card and her motives in so doing, without any assurances of no reprisals, and served notice on her that Respondent knew she had signed a union card Lowery's interrogations violated Section 8(a)(1) of the Act.

Kennedy's testimony on this meeting with Lowery merely adds that Lowery solicited questions about the Union from her and gave generally noncommital answers when she inquired about benefits of a union label, an incentive system, etc. Kennedy credibly avers that Lowery volunteered that if the Union came in employees would get paid no more because the Company would only pay so much. I do not believe that this latter volunteered statement on wages constitutes a threat in the usual sense, but it does convey the idea that the selection of the Union would be a futile gesture insofar as wage increases were concerned. To that extent, Lowery's statement tended, in some degree at least, to interfere with and restrain Kennedy in the exercise of her Section 7 rights, and its import was exacerbated by the context of a closed meeting with a supervisor in his office wherein he had already coercively interrogated her. Accordingly, I find the comment on the future of wages violated Section 8(a)(1) of the Act.

(b) On or about March 17, 1979, Rebecca Stephenson asked Lowery for permission to take some time off work. He responded that since she had not signed a union card he would let her be off. She told him that she had signed one. I credit Stephenson that Lowery then told her that if she signed a card she automatically had to join the Union if it came in. I credit Lowery that he also told her that if she needed to be off he would still "work with you" whether or not she had signed a card.

In my view, Lowery's initial comment indicating he thought Stephenson had signed a union card amounted to a solicitation of a response as to whether or not she had signed one. This is interrogation into union activities prohibited by Section 8(a)(1) of the Act.[36] I do not agree with the General Counsel that Lowery's implied question was also a threat of reprisal against employees who designated the Union to represent them. It might be construed as a grant of benefit because Lowery thought Stephenson was not a card signer. In either case, grant or threat, Lowery's subsequent statement amounts to a promise to treat her leave requests as he had in the past, regardless of whether or not she signed a card and effectively erased any coercion that may arguably be inferred from his initial statement. Moreover, Lowery granted her leave requests on several occasions thereafter. I note that Alabama is a right-to-work State and Lowery's statement of the requirement to join the Union amounts to the dissemination of misinformation, but I am persuaded his erroneous comment on this topic does not rise to the stature of a threat violative of the Act.

(c) Some time in March 1979 employees Joe Whitehead and Bill Renfroe were discussing what the Union could do for them. Lowery was present and commented that either "it'll hurt you," as Whitehead first testified or that "it could hurt," as Whitehead acknowledged on cross-examination.[37] It is questionable whether the first version constitutes a threat and the second clearly does not. In view of Whitehead's modified testimony, I find that the General Counsel has not shown by a preponderance of the evidence that Lowery threatened employees in violation of Section 8(a)(1).

(d) It appears that Respondent has a rule against dropping hard waste on the floor. On March 5, 1979,[38] Lowery issued a verbal warning to Betty Underwood, an outstanding union protagonist, for an infraction of this rule.

According to Underwood, Lowery spoke to her about dropping hard waste, said that he knew she was in a union campaign and would do nothing to break a rule during this time period, and recited that he was going to break her from a bad habit while the Union was in town.

Lowery testified that he reminded Underwood that he had several times spoken to her about the hard waste, told her he was giving her a verbal warning and making it part of her record, and stated that he felt it would be a good time for her to break the habit of throwing hard waste on the floor. This was the only verbal warning he ever gave her for this offense.

Neither witnesses' demeanor provided me with any convincing clues as to which gave the more accurate account, but the fact that Underwood was still employed by Respondent and supervised by Lowery at the time she testified persuades me that she was not likely to be deliberately fabricating testimony reflecting adversely on Lowery's conduct, and Lowery does not specifically

[36] That Lowery may have thought he was joking does not mean Stephenson did.

[37] Lowery says he probably said it could hurt but denies saying it would hurt.

[38] Underwood claims she received the warning in late March or early April, but I am persuaded by the written record of the warning, which Lowery convincingly authenticated, that the warning was given on March 5. Underwood's erroneous testimony on the date is insufficient to collaterally discredit her on other matters.

deny mentioning the Union. I therefore credit her version where it varies from that of Lowery.

There is obviously nothing unlawful about reprimanding an employee for violation of what appears to be a legitimate company rule, but it is unlawful to advise the employee that the timing of the warning was precipitated by the presence of the Union because this clearly puts the employee on notice that union activities not only caused this warning but may cause other adverse actions to be taken by the employer. I find that Lowery did make an implied threat to Underwood of reprisals for union activitiy and the issuance of the warning on March 5 was motivated by the presence of union activity. Both violated Section 8(a)(1) of the Act.[39]

(e) On or about April 19, 1979, Lowery and Underwood had another conversation. The Union had distributed a notice of the time and place of its next meeting, but left the space for the agenda vacant. I credit Underwood that Lowery jokingly said that it was no wonder there were not more people at the meeting if this were all that was on the agenda. Underwood told him not to worry about it because there would be something on the agenda. Lowery rejoined, "No kidding, what have you got on the agenda for Sunday?" She asked why he did not come to a union meeting and find out inasmuch as he had been a union person, and that he might enjoy it.

I am aware that tortuous reasoning can wring ominous nuances out of the slightest statement, but I cannot in good conscience conclude that this conversation contained anything more than good-natured banter and innocuous repartee, or had any reasonable tendency to infringe on Underwood's statutory rights. I therefore find that Lowery did not unlawfully interrogate Underwood as the General Counsel alleges.

(f) On or about April 24 or 25 or some time in May,[40] Lowery told Elizabeth Sharp that he knew she was friendly with Betty Underwood, but thought Sharp was on his side. She replied that she did not know what he was talking about. He said she knew what he was talking about, and that he still thought she was on his side.

Considering that the record fairly establishes that Underwood was a leading supporter and there appears to be no other reason for Lowery to refer to Sharp as being on some side or other, I conclude that Lowery's enigmatic statement translates into an effort to elicit a statement from Sharp as to whether she was for or against the Union.[41] This is unlawful interrogation into her sympathies *vis-a-vis* the Union and violates Section 8(a)(1) of the Act.

(g) On or about May 3, 1979, employees Dingler and Renfroe started discussing the Union in Lowery's presence.[42] I find Lowery's version more believable and his delivery more convincing than that of Dingler. Lowery interjected into the conversation that his wife had not been helped by being a union officer when she worked at a union plant and was changed to a lower paying job. It is not clear whether he also said that he had kidded his wife by asking her why she did not go to her Union if she were being so mistreated, or if this comment was tacked on at the hearing as a side remark to the judge. I got the impression the latter was the case. In any event, I find nothing unlawful in Lowery's comments to Dingler and Renfroe. He interrogated no one on this occasion, and I shall recommend the allegation of interrogation be dismissed. Nor do I find that his comments were an unlawful effort "to impress upon Dingler the futility of supporting the Union."

(h) On May 11, 1979, several employees, including Underwood, were short $2 in their paychecks because of a computer error. On May 12, they protested to Plant Manager Bowman who explained the computer error and promised the mistake could be corrected on their next paycheck.

That evening, May 12, Lowery approached Underwood at her work station and asked what had happened with respect to the pay problem.[43] Underwood told him that the Company had been going to take the employees' 5-cent premium pay for the shift away from them. Lowery said, "Just raise hell, Betty . . . if you'll notice, Dennis Williams raised hell for a couple of weeks, and he's not here any longer." (Williams had been discharged about a week before this.) Underwood told Lowery that if that were a threat she would not be as easy as Williams to get rid of. Lowery pointed out it was a "one-on-one" conversation and his word was as good as hers. She retorted that they would let the government decide whose word was as good as hers and whose word was best. That ended the conversation.

I agree with Respondent that Lowery did not threaten Underwood with discharge "if they joined or engaged in activities on behalf of the Union" as the complaint alleges. Underwood was, however, engaged in protected concerted activity when she and others protested the pay shortage, and Lowery's statement was a threat of discharge because she was complaining of that shortage. Her complaint was a direct continuation of her concerted activity. Lowery's statement was patently interference, restraint, and coercion of Underwood in the exercise of her Section 7 rights. The matter was fully litigated and the threat was alleged as a violation of Section 8(a)(1) of the Act. Respondent had ample notice of the nature of the violation from her testimony of January 7, 1980, and adduced evidence from Lowery, which I have not credited, in response thereto on February 6, 1980. Accordingly, I am persuaded that the incident was adequately covered by the allegations of the complaint and the general 8(a)(1) allegations of the amended and second amended charges, was litigated, and may be found a violation of Section 8(a)(1), which I now find Lowery's threat to be.

[39] It is not alleged in the complaint that the warning was given in violation of Sec. 8(a)(3), and the remedy would be the same in any event.

[40] The record is not clear as to which was the date of this incident.

[41] If Lowery's statement is susceptible of several meanings, as Respondent argues, the burden of clarifying any ambiguity fell on Lowery not Sharp. She in effect asked him what he meant, but he elected merely to repeat himself, stating that she knew what he was talking about. Inasmuch as his comment could reasonably be construed as unlawful interrogation, and he made no effort to clarify to show it was not but chose to remain mysterious, there is no reason to assign it another meaning.

[42] Renfroe had been walking with Lowery.

[43] I credit Underwood on this topic.

6. Conduct of Respondent's president, Richard C. Thatcher, Jr.

The General Counsel alleges that Thatcher threatened loss of benefits in an address given to several employees, and proffers employees Kathy Holland, Elizabeth Sharp, Betty Underwood, and Melinda Kennedy as witnesses in support thereof.

The meeting in question was conducted by Thatcher with six employees in the plant's laboratory about 6 a.m. on May 8. Mark Maddox, Respondent's industrial relations director, was also present.

Holland testified as follows:

> Mr. Thatcher asked us about, you know, why we were wanting a Union and stuff like that. And I remember one thing that he said specifically when we were talking about what would happen if we got a Union; he said that everything would just be cleared from the table, and we would start from scratch. We would not have any contract; we would not have any wage rights or anything.
>
> He said it would be minimum wage, and we would work from there—no vacation pay, no holiday pay, no nothing. That they would negotiate from that.

Sharpe testified on direct examination:

> [Thatcher] said that he would sit down and negotiate with us if we voted a Union in, but he didn't want a Union to come in, that we would start from scratch. And we would not have any paid holidays, not have any pay raises.
>
> Q. Do you recall anything else?
>
> A. He said that he wanted to explain the plan, and he wanted to make it a happy place to work.

On cross-examination, *Sharp* testified:

> Q. Now, at this meeting, according to your testimony, Mr. Thatcher indicated that if the Union was voted in, he would sit down and negotiate with the Union, isn't that correct?
>
> A. Yes, sir.
>
> Q. And isn't it also true that he said that there would be no guarantee that your wages or holidays or insurance would be improved as a result of negotiations?
>
> A. Yes, sir.

Kennedy testified on direct examination that Thatcher said, "We were not guaranteed even what we were getting paid now—that we would have nothing, that we'd just sit down and negotiate from nothing." On cross-examination she verified that on May 24, 1979, she gave an affidavit to the Board in which all she reported about Thatcher's comments was that, "He said that they tried to keep up with industry standards and gave us a raise when the rest of the industry did." She claims that her affidavit just does not contain everything.

Underwood recalls that Maddox made opening remarks that the employees did not need a union and he did not want them to have one. She recalls nothing else that Maddox said and recalls only the following with respect to what Thatcher said:

> Well, he told us that if we voted a Union in, he would sit down and negotiate with us, but that we would go back from scratch—we would start from scratch in negotiations. And I said, Mr. Thatcher, what do you mean by starting from scratch?
>
> And he said he would go back like the day we were hired in, we would not have any paid holidays or any vacation or any pay raises—that we would go back and start from scratch and negotiate from there, and there would be no guarantee that we would even be making the amount of money that we were now making.

Thatcher remembered that the meeting where the above employees were present lasted about 45 minutes and he started it by making a speech adhering to prepared notes.[44] After the speech he opened the session up for questions. He testified that the only statement he made about negotiations was that if Respondent negotiated it would do its utmost to negotiate a contract which would protect management's interest in properly running the plant. He does not recall that Underwood asked what would happen if the Union won the election, and states that most of the employees' questions were complaints about Supervisor Frank Lowery. The arguably relevant portions of Thatcher's notes read as follows:

> III Our position on the Union
>
> A. The question at Boaz is not whether unions are good or bad but whether you need one.
>
> It costs money to belong to a union, so you don't get one unless you need it.
>
> B. I think the Company has done everything it can to make this plant the kind of place people should enjoy working in.
>
> It is one of the highest paid plants in the Company.
>
> All hourly jobs at Boaz have a guaranteed day rate. There are no incentive jobs. This is what you said you wanted. That is not the way we have handled union plants in S-C-T.
>
> We brought the Behavioral Science people to Boaz first—to help us improve communications and efficiency.
>
> You are paid wages and benefits which are competitive in the textile industry—this has always been the case.
>
> There is nothing in wages or benefits that the Union has been able to get out of negotiations with S-C-T that you have not gotten without a union at least as quick.
>
> If a company is doing all it can do—or all it is willing to do—there is no reason to pay a union to represent you. I believe S-C-T is doing all it can do

[44] He used the same notes at the 12 or 13 meetings he addressed that day. There is no contention or evidence he made any unlawful remarks at any other meeting.

at this time and remain competitive, and I am not going to let any union make us noncompetitive. That could cost all of us our jobs.

I am sure you have individual problems at Boaz from time to time. There are always those days your supervisor doesn't act just the way you want him to. But we must recognize that supervisors are human beings, and they have bad days just like we do—whether there is a union in the plant or not.

I don't think unions help improve relations between the supervisors and the employee. They make them more difficult by adding a third party to the discussion. The third party, who is either a union steward from the plant or a paid professional union organizer, always thinks it is their job to cause dissension. Look around this plant—you know who the union stewards would be. Do you want them speaking for you?

I think the facts show that you have been heard more and better by the management of this Company at Boaz without a union than the employees at Guntersville and Chattanooga have with a union.

IV Our experiences with this Union

A. This Company's past experiences with this Union have not been pleasant ones.

The two things that stand out most in our relationship with the Union are: (1) the bitter strikes and (2) the long, drawn out negotiations in which the Union has always come out on the short end of the stick.

Chattanooga and Guntersville employees got their wage increases in 1977 and 1978 after you did. For example, in 1977 Guntersville got their increase 13 weeks after you did. Also, no Guntersville or Chattanooga employees got any increase in February 1978, like you did. You have had three increases since early 1977, whereas Union employees in this Company have had only two. And the average wage at Boaz today is substantially higher than at Guntersville.

There have been two strikes at Guntersville and two strikes at Chattanooga. The 1978 strike in Chattanooga was the most bitter strike I have ever witnessed. It was like something out of the early 1930's. There were Union goons on the picket line with clubs and knives and that sort of thing. Many people were injured. Twenty-three employees were fired for misconduct. For all of the damage that was done, the Union got nothing out of the strike. They got the same wage increase you did—only much later.

Maddox testified that the meeting lasted about 30 to 45 minutes and the general topic of employee discussion was complaints by Kennedy and Underwood about Frank Lowery. In response to leading questions, he denied that Thatcher said negotiations would start from scratch or that employees would lose benefits if the Union got in. He recalls no questions by Underwood concerning the Union.

I am satisfied that Thatcher did not merely read his notes verbatim, but made comments relating thereto and answered employee questions. An examination of the employees' testimony, making allowances for normal differences which often arise when several people hear the same thing but put different interpretations on it and become convinced that their perceptions are what was in fact said, persuades me that Thatcher did advise the employees that negotiations would start from scratch, there would be no guarantees that present benefits would remain the same and they would all be subject to negotiations. Underwood's testimony most probably makes the closest approach to what was said in this regard by Thatcher, but I find it was colored by her subjective conclusions.

There is no showing Thatcher's notes contained untruths, and I find, assuming *arguendo* that he did in fact read them aloud, that they contain no threats, improper promises, or proven material misrepresentations. I do not agree with the General Counsel that Thatcher's comments about the bargainability of benefits were either threats of loss of benefits or clearly intended to convey to employees the futility of union support. I find that the thrust of these comments was that the selection of the Union would not necessarily mean increases in wages or other benefits and that all wages and benefits were subject to bargaining. Such advice is not in violation of the Act.[45]

The opening remarks by Maddox, related by Underwood, are protected free speech under Section 8(c) of the Act.

7. Conduct of Industrial Relations Manager Mark Maddox

On May 14, Maddox met with a group of about 10 employees in the plant laboratory where he put on a slide presentation with accompanying taped narrative. The slides were in major part quotations from cases decided by the Supreme Court and the Board. I credit Maddox that there was no slide of a blank piece of paper. The narrative outlines the law on the duty to bargain and arrives at the following conclusion on this subject:

So, it is easy to see that voting for a union does not

—guarantees that your wages, benefits or working conditions will be better than they are today;

—in fact, there is no guarantee that through good faith bargaining your wages, benefits and working conditions will even remain the same as they are today. When you sit down to negotiate with a union, you start off with a blank piece of paper and you don't write anything down on the paper until both parties agree.

The only evidence proffered by the General Counsel to support the allegation that Maddox threatened employees with loss of benefits if they selected the Union is

[45] *Coach and Equipment Sales Corp.*, 228 NLRB 440, 441 (1977).

the testimony of Melinda Kennedy. Kennedy, a somewhat confused witness, testified that during one meeting there was talk about having a union and a blank piece of paper appeared on the screen while employees were told, "When we sit down to negotiate, you know, we would start from scratch. We wouldn't have anything that he had had before." She altered this testimony on cross-examination to reflect that employees were told *in haec verba* that when negotiations commenced "there was no guarantee that we would even be making what we had now, or even have at all what we have now."

I conclude that Kennedy's testimony is a paraphrase of the narrative excerpt set forth above, that there was no slide shown of a blank piece of paper, and that Respondent did not violate Section 8(a)(1) of the Act by either its slide presentation or accompanying narratives.

8. Interrogation by Respondent's counsel

The hearing was in recess from January 10, 1980, to February 5, 1980. On February 7, the General Counsel amended the complaint to allege that Respondent's counsel, Martha C. Perrin, unlawfully interrogated two employees on January 28, 1980. The employees were Jeff Tillman and Willis Langston.

Perrin credibly testified that she questioned employees on January 2, 3, and 28, about 70 to 75 in all. She stationed herself in the first aid room and no one else was present during her meetings with individual employees. Her procedure was to introduce herself as an attorney for Respondent preparing for hearing who would only speak to them regarding authorization cards. She routinely advised that the employee did not have to speak with her and read a prepared statement as follows:

> My name is Martha Perrin and I am an attorney for Standard-Coosa-Thatcher. My purpose in talking with you is to help the company prepare for the unfair labor practice hearing which will begin next week. I have prepared a list of questions to ask you in regard to the blue union authorization cards.
>
> I want you to understand that this interview is strictly voluntary on your part. If you do not wish to talk with me you are free to go, either now or at anytime during the interview. No reprisal or any other action will be taken against you by me or the company because of your talking with me, your refusal to talk with me or because of anything that might be said during the interview.
>
> If you agree to talk with me under these conditions, please sign below:
>
> > The above statement has been read to me; I understand that this interview is voluntary; and I am agreeable to this interview

Approximately 50 or 55 employees interviewed signed this statement. Of the remainder some refused to talk to her while others agreed that they understood the statement and talked with her, but refused to sign the statement. The General Counsel does not allege that anyone other than Tillman and Langston were unlawfully questioned, and I find that the above statement incorporates safeguards endorsed by the Board as appropriate for the conduct of such interviews.[46]

I credit Perrin that she interviewed Tillman on January 2 or 3, rather than January 28 as Tillman testified. She was the more believable witness in terms of demeanor, and I found her testimony more convincing in context than that of Tillman. Further, Tillman's timecard shows that he was not at work during the hours from 11 p.m., January 28, to 7 a.m, January 29 when Perrin conducted the employee interviews. Crediting Perrin as I do, I find that the interview with Tillman opened with her self-introduction and explanation that she was only inquiring about the cards. She then advised him he did not have to talk to her, and read the above-prepared statement aloud. Tillman expressed his understanding that his presence was voluntary, but declined to sign the statement. Perrin inquired further as to whether or not he understood what he had read. Satisfied that he did, she noted, after Tillman left, on a copy of the statement that Tillman would not sign but had said he understood. She asked him if he had signed an authorization card. He first answered he had not, but then amended his answer to say that he had but later torn the card up.[47] He expanded that he had torn it up because a supervisor had seen him and he wanted no one to know he had signed one. It does not appear anything further was said. Tillman characterizes the talk with Perrin as a friendly conversation.

Perrin talked to Willis Langston on January 28.[48] Perrin expressed concern about Langston's injured arm, and introduced herself as Respondent's lawyer. She then mentioned that she recently had to have her cat treated by a doctor. The testimony of Langston and Perrin differs as to what was then said and done.

Perrin's version is that she explained she was only there to inquire about authorization cards in preparation for the hearing, and that she would like to talk to him about a card with his signature on it that had been introduced in evidence by Bobby Joe King. A copy of that card was lying in front of her. She continues that Langston then responded that he had signed a union card, whereupon she thanked him, and he left with her last words being a statement of concern that his arm improved.

Langston states that Perrin told him she had a picture of a card he had signed and asked if he had signed it or if it was his signature. She showed it to him, and he verified that it was his signature. Perrin then advised him that Bobby Joe King had turned the card in, and inquired if King had told Langston what he was signing. Langston answered that King did not have to because he read it and knew what he was signing. At this point, Perrin told him that would be all, and expressed a hope that his arm would be alright. Langston denies that Perrin read anything to him or told him he did not have

[46] See *Johnnie's Poultry Co.*, 146 NLRB 770, 775 (1964).

[47] These statements to Perrin were admittedly untrue.

[48] Although Perrin was earlier told by a supervisor, during the January 2 and 3 interviews, that Langston had refused to talk to her, Langston denies this. Apart from Perrin's hearsay testimony on the matter there is no probative evidence to refute Langston's denial, and I credit him on this point.

to talk to her or that no reprisals would be taken against him for anything he talked about.

As I observed Perrin and Langston, it was my distinct impression that both were testifying truthfully to the best of their respective recollections. I consider any variance between their versions to be due to normal frailties of memory about a conversation which neither had any reason at the time to consider important enough to carefully commit to memory verbatim for future retrieval. I am persuaded that their testimony is complementary rather than contradictory, and find that the following summary is a fair and reasonable resume of what most probably occurred during this meeting: Perrin advised that she was Respondent's lawyer there to inquire about authorization cards in preparation for the hearing, and wanted to know whether Langston had signed a card which King had introduced in evidence and what King had said was its purpose. The card was in front of Perrin and Langston promptly stated he had signed it, had read it, had known what he was signing, and there had been no need for King to explain it. She thanked Langston and told him that would be all, expressing concern about his arm as he left. I am satisfied Perrin neither read the prepared statement to Langston nor orally recited the safeguards therein.

With respect to the Tillman conversation, I find that Perrin carefully observed the Board-approved safeguards applicable, properly advised Tillman of his rights, limited her interrogation to reasonable and necessary inquiry solely designed to assist in the presentation of Respondent's defense at the hearing, and did not violate Section 8(a)(1) of the Act.

The only real issue to the Langston incident is whether or not Perrin's failure to assure him there would be no reprisals rendered her inquiry violative of the Act. A strict application of the *Johnnie's Poultry Co.*[49] standards would appear to require a finding of a violation. I am not, however, convinced that either the Board or the courts intended the standards to be mechanically applied in every case without resort to reason in the light of the surrounding circumstances. Here we have a situation where, so far as the record shows, Perrin properly advised every one of 70 or so employees interviewed with the single exception of Langston. Whether Perrin was prevented from advising Langston in accordance with the *Johnnie's Poultry* rules by the rapidity of his response to her initial statement of purpose or by inadvertence is speculative. I believe, however, that a fair inference may be drawn that the content of the meetings was widely known among the employees. The hearing itself most certainly had to be a topic of conversation among them, and it is probable there was an exchange of experiences among those interviewed by Perrin. I am of the opinion that Langston was most likely forewarned about the content of the interviews. I do not suggest that this hearsay knowledge was equivalent to direct communication from Perrin, but I do suggest that the circumstances herein, where 70 people are interviewed and all but one appropriately reassured, support an inference that Langston was not totally unaware of what Perrin's purpose and procedure was before he entered the room.

The purpose of the *Johnnie's Poultry* safeguards is not to penalize attorneys for legitimate pretrial preparation, but to "minimize the coercive impact" of the questioning involved in such preparation. Perrin's announcement to Langston that his card was in evidence via the testimony of King truthfully advised Langston of what was public information with respect to his card, and her request for his verification was legitimate trial preparation. I am convinced that the coercive impact of Perrin's questions was minimal, if any, and that no violation should be found just because Perrin varied her uniform practice 1 time out of 70. The evidence warrants no inference that the variance was either planned or unlawfully motivated.

D. *Alleged 8(a)(3) Violations of the Act*

1. The rule against leaving the department

Respondent has a work rule prohibiting "Unauthorized absence from your work area or the Plant" which was in effect at least as early as April 1, 1978. Inasmuch as this rule was promulgated considerably more than 6 months before the filing of the first charge in the instant case, said promulgation may not be found to be a violation of the Act.

The real issue is whether or not the rule was enforced in a manner designated to discourage union activity among Respondent's employees. Evidence that Respondent had utilized this rule in such a fashion during an earlier union campaign is found in Donna McWhorter's credible testimony that in November 1977[50] Plant Manager Bowman stopped her as she was going to visit another employee, asked if she had permission to leave her department, and told her that it looked bad for her to be roaming around because Respondent was trying to stop union adherents from roaming around because they were getting union authorization cards signed. He also advised her that she should tell anyone who asked that he had "gotten on" her for going to the other plant.

There is no evidence that anyone was warned for violating this rule between the time of Bowman's statements to McWhorter and December 11, 1978, when Barbara Lemons and Glenda Finley were given warnings for leaving the mill without permission. The next warning in evidence was issued to employee Talley on February 2, 1979, for leaving the job too long.

I credit Patricia Whisenant that Supervisor "Butch" Harris gave her a written verbal warning in March 1979 against leaving the department, and told her that, although she had done nothing as yet, the warning was to insure that she could not claim she had not been warned. Whisenant credibly testified that employees had previously been allowed to come and go from the department unhindered and that Harris said there was a new company rule on leaving the department.

[49] 146 NLRB 770, 775 (1964).

[50] I conclude November 1977 is most probably the date of this occurrence because this was the first time McWhorter had seen Bowman, and he testified that he had come to the plant about 2 years and 3 months prior to his February 5, 1980, testimony.

Bobby Joe King and Patricia King credibly testified that Supervisor Bill King, who did not testify, told them (Bobby Joe in February 1979 and Patricia in March 1979) that they could no longer leave their department without permission except to go to the bathroom or breakroom, a clear change from the practice then existing of leaving the department without permission and without discipline therefor.

Gloria Stanfield was issued a written verbal warning for being out of her department on May 4, 1979.

Dennis Williams was issued written warnings on March 29 and April 9, 1979, for, *inter alia*, leaving his department without permission.

I am persuaded by the evidence before me that the rule was honored in the breach between union campaigns. Between November 1977, 1 month before a Board-conducted election, and February 9, 1979, the date the present union campaign began, the only proven warnings given for infractions of the rule were December 11, 1978, and February 2, 1979. It is highly improbable that all 147 employees religiously abided by the rule during this 13-month period, and there is credible employee testimony that they did not. Bill King's advice to Bobby Joe King and Patricia King that they could no longer leave without permission signaled a change to more rigid enforcement, and Harris' prospective warning to Whisenant emphasized a new insistence on strict compliance with the rule. No persuasive reason was proffered for this more stringent policing of rule violations, and the reasons for the 1977 enforcement stated by Bowman to McWhorter, combined with the timing of the statements of Bill King and Harris shortly after the commencement of the new campaign, led me to the conclusion that the emphasis on enforcement after the campaign started was prompted by the new campaign and was designed, as in 1977, to impede the acquisition of signed authorization cards. Respondent's argument that the rule was enforced against both pro and antiunion employees is not convincing because, even if this were true, the mere fact that enforcement designed to forestall union activities fell equally on all employees would not make such unlawfully motivated enforcement lawful. In point of fact, such blanket enforcement would be the most effective way to short circuit all such union activities. On the evidence before me, I conclude and find that the policy of rigid enforcement of the rule was instituted in 1979, as in 1977, to combat union activities and therefore violated Section 8(a)(3) and (1) of the Act.

2. The reprimands and discharge of Dennis Williams

The plant rules provide that infractions thereof, including the rule on "unauthorized absence from your work area or the Plant" discussed above, "will result in disciplinary action ranging from verbal warning to immediate discharge, depending upon the type of violation and the circumstances surrounding the offense." Respondent's "corrective action" manual requires discharge upon receipt of a fourth warning slip.

Williams received such warnings on March 29, April 9, April 24, and May 7, 1979, and was terminated on May 7 on the ground he had received four warnings. These warnings read as follows:

> March 29, 1979—Leaving department without permission left Mill no. 2 went to Mill no. 1 was talking to Spinner on her job
>
> April 9, 1979—Leaving his department without permission. leaving twister unattended.
>
> April 25, 1979—Did not clean his twister like he was asked to. Did not punched [sic] out his time card two days on outside of building before Seven o'clock AM. did not pick up his Dr. Pepper can and papper [sic]
>
> May 7, 1979—Failure to follow instructions (did not punch out time card two times during week ending 5/5/79)

Inasmuch as the March 29 and April 9 warnings were based on violations of the "unauthorized absence" rule which I have found was enforced for unlawful reasons, it necessarily follows that these warnings were violative of Section 8(a)(3) and (1). Moreover, Lowery's account of the alleged violations is not convincing. With regard to the March 29 warning, Supervisor Lowery states that he observed Williams away from his department and talking to working employee Copeland for 5 to 10 minutes before Lowery terminated the conversation. This implies that either Lowery was not overly concerned about the time so spent, or that he deliberately permitted the conversation to continue in order to build sufficient cause for the warning later issued. Neither alternative affords Respondent support for any contention that the absence of Williams from his work was of vital concern. In any event, I do not believe it likely that Lowery would merely stand and observe a 5- to 10-minute conversation on company time by an on-duty employee out of his department without earlier breaking it up. I find it far more probable that Williams only stopped for a brief moment, as he testified, before Lowery called him to the office. I further credit Williams' account of what transpired in the office over that of Lowery who recalls nothing of what Williams said.[51] In the office, Lowery told Williams he would have to write him up for being out of his department. Williams told Lowery that he had been on his way to get cones for his machine, and asked if it were alright for him to speak to his brother from time to time for a few minutes because their mother had been operated on. Lowery gave him permission to so do as long as it was within reason.

Lowery's self-professed conduct on April 9 was even more interesting. He avers that he watched Williams talking to his brother and leading union adherent Betty Underwood, away from Williams' department, for about 5 minutes, and then left to find another supervisor, Buford Centers, whom he asked to wait in the supervisors' office, then returned and watched the conversation for another 5 minutes. Lowery did nothing to interrupt the conversation, but later called Williams to his office

[51] I also note that the failure of Respondent to call Centers, a witness to the first three warnings, warrants an adverse inference.

and issued him the warning. I do not believe Lowery and credit Williams that he only stopped for 3 or 4 minutes to converse, returned to work, and was called in by Lowery and issued his second warning. It would seem that Williams' conversation with his brother was within the ambit of Lowery's earlier permission, and the fact that his brother was talking to Underwood when he came up to them did not work to void that permission, unless, as is quite likely, Lowery was opposed to Williams consorting with known union adherent Underwood. Indeed, the whole purpose of Respondent's enforcement of the rule was to halt such contacts.

The evidence preponderates that Williams did in fact commit the infractions for which he received the April 25 warning. However, the failure to investigate Williams' credible claim that Ray Hollis had been outside the plant with Williams or to take any remedial action against Hollis indicates an effort to enforce plant rules strictly against Williams while ignoring the conduct of Hollis. Hollis did not sign a union card, but Williams had signed one on February 8 and credibly testified that he told Lowery, some 2 weeks before his discharge, that he was for the Union. Two weeks before May 7 would approximately coincide with the April 25 warning. The disparate treatment of Williams and Hollis suggests an effort to concentrate on Williams without regard to other employees' conduct. In the absence of good reason for the disparate application of the rule, I am persuaded the warning was given in continuation of Respondent's efforts to discourage Williams' union activity.

Williams did not punch his timecard twice during the week ending May 5, 1979, and the fourth warning was therefore for colorable cause, but it takes on an unlawful color from the context of other unlawful warnings within which it was given.

Respondent's hostility to union activities is abundantly shown by its other violations of the Act heretofore found. It was made explicitly aware of Williams' pro-union attitude in mid to late April, and could have reasonably inferred the direction of his sympathies from Lowery's observation of his association with known union adherent Underwood on April 9. Respondent's reliance on many rather minor infractions to support the last two warnings, except for Williams being outside the building which loses force by virtue of Respondent's failure to act against Hollis who apparently was not a union supporter, indicates a straining to terminate Williams. Respondent's efforts, via the testimony of employees Wrenn and Hilley, to show that Williams suddenly became an unsatisfactory employee were not convincing. Although Wrenn traced his deterioration in terms of absences from the department to 3 months before his discharge, Hilley pegged it around 14 to 15 months before his discharge. Hilley is probably correct to the extent that Williams credibly testified that prior to his first warning he regularly left as he pleased without hindrance. My conclusion that the rule against leaving the work area was not enforced except during union campaigns confirms the testimony of Williams and Hilley in this regard.

In sum, I find that the first two warnings were given pursuant to a policy of discouraging union activity and were therefore unlawful. But for these unlawful warnings, Williams would not have been discharged and the discharge was therefore violative of Section 8(a)(3) and (1) of the Act as a product of rule enforcement designed to discourage union activity. Moreover, Respondent, by its agent Lowery, attempted to expand on the events giving rise to the first two warnings and treated union adherent Williams differently than nonunion employee Hollis when they were absent from the plant together. I conclude that the third warning was given to accelerate the departure of Williams and the fourth to complete it. The General Counsel has set forth a *prima facie* case, which Respondent has not convincingly rebutted, that the entire sequence of warnings was consciously designed to remove a union adherent from the payroll. Therefore all four warnings and the discharge are also unlawful for this reason.

E. *The Objections*[52]

The objections to election set for hearing before me in Case 10-RC-11707 read as follows:

> 1. Threats of adverse consequences of unionization, including loss of benefits: April 11, April 20, May 4-19, May 7 and May 17.
>
> 2. Institution and enforcement of stricter rules: April 10, 11, 12, 13, 17, 24 and 30.
>
> 3. Threat of adverse consequences up to and including discharge for engaging in union activity: April 3, May 2 and May 16.
>
> * * * * *
>
> 8. Interrogation of employees concerning their union activity: April 19 and March 22-May 18.
>
> 9. Promise of benefit to employees to discourage union activity: March 24 and May 4.
>
> 10. Discharge of and/or refusal to re-employ employees for engaging in union activity: March 23, April 10, April 11 and April 25.

I have found certain matters alleged as objections to be unfair labor practices occurring during the critical period between the petition and the date of the election,[53] and it is well settled that unfair labor practices constitute objectionable preelection conduct.[54] Accordingly, I recommend the objections be sustained and the election be set aside.

F. *The Duty To Bargain and the Refusal To Bargain*

Having concluded that the election should be set aside, it is now appropriate to consider the refusal-to-bargain allegations.[55]

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[52] Objections 4, 5, 6, 7, 11, 12, 13, 14, and 15 were withdrawn by the Union.

[53] *The Ideal Electric and Manufacturing Company*, 134 NLRB 1275 (1961); *The Goodyear Tire and Rubber Company*, 138 NLRB 453 (1962).

[54] *Dal-Tex Optical Company, Inc.*, 137 NLRB 1782, 1786 (1962).

[55] *Irving Air Chute Company, Inc., Marathon Division*, 149 NLRB 627 (1964).

The parties have agreed to the appropriate unit of Respondent's employees set forth hereinabove, and further agree that the Union made a bargaining demand on March 21, 1979, and Respondent has refused to bargain with the Union since that date. I have found that the Union represented a majority of Respondent's employees in the unit when it requested and was refused recognition on March 21, 1979.

Considering all of Respondent's unfair labor practices found herein, I am convinced that those unlawful acts were aimed at discouraging employee support of the Union and thus preventing the Union from attaining majority support, or destroying any majority status the Union may have had. I find that Respondent's conduct had "the tendency to undermine [the Union's] majority strength and impede the election processes,"[56] that the continuing impact of Respondent's coercive conduct renders a fair election unlikely, and that the authorization cards signed by employees are a more reliable indication of their desire for representation. Consequently, I find and conclude that Respondent violated Section 8(a)(5) and (1) of the Act by refusing to bargain with the Union as of March 21, the date it demanded recognition.

Upon the foregoing findings of fact and conclusions based thereon, and upon the entire record in this case, I make the following:

CONCLUSIONS OF LAW

1. Standard-Coosa-Thatcher, Carpet Yarn Division, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Amalgamated Clothing and Textile Workers Union, AFL-CIO, CLC, is a labor organization within the meaning of Section 2(5) of the Act.

3. The following employees constitute a unit appropriate for collective bargaining:

> All production and maintenance employees employed by Respondent at its Boaz, Alabama, facility but excluding all office clerical employees, professional employees, guards, and supervisors as defined in the Act.

4. At all times since February 20, 1979, and continuing to date, the Union has been the exclusive representative of all the employees within said appropriate unit for purposes of collective bargaining within the meaning of Section 9(a) of the Act.

5. By coercively interrogating employees about their union activities and those of others, Respondent violated Section 8(a)(1) of the Act.

6. By threatening employees with discharge, plant closure, loss of access to management, insistence on contract terms unpalatable to employees, and other unspecified reprisals because of their union activities, Respondent violated Section 8(a)(1) of the Act.

7. By making implied promises of benefit to employees conditioned on their abandonment of the Union, Respondent violated Section 8(a)(1) of the Act.

8. By telling employees the timing of work-related warnings was caused by the existence of union activity, Respondent violated Section 8(a)(1) of the Act.

9. By threatening employees with discharge because they engaged in protected concerted activity, Respondent violated Section 8(a)(1) of the Act.

10. By more rigidly enforcing company work rules for the purpose of discouraging union activities, Respondent violated Section 8(a)(3) and (1) of the Act.

11. By issuing warnings to Dennis Williams in reprisal for his union activities, Respondent violated Section 8(a)(3) and (1) of the Act.

12. By discharging Dennis Williams for engaging in union activities, Respondent violated Section 8(a)(3) and (1) of the Act.

13. Respondent engaged in objectionable conduct requiring that the election conducted on May 18, 1979, in Case 10-RC-11707 be set aside.

14. By engaging in the above-described violations of Section 8(a)(3) and (1) of the Act for the purpose of undermining and destroying the Union's majority status, or to prevent it from attaining such status, Respondent violated Section 8(a)(5) and (1) of the Act.

15. The violations of the Act found herein interfered with the election process, had a tendency to undermine the Union's strength, prevented the holding of a fair election, and warrant the issuance of a collective-bargaining order.

16. The unfair labor practices set forth above are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

17. Respondent did not commit any other unfair labor practices alleged in the complaint.

THE REMEDY

In order to remedy labor practices found herein, my recommended Order will require Respondent to cease and desist from further violations, to post an appropriate notice to employees, and to offer unconditional reinstatement to Dennis Williams and make him whole for all wages lost by him as a result of his unlawful discharge, such backpay and interest thereon to be computed in the manner prescribed in *F. W. Woolworth Company*, 90 NLRB 289 (1950), and *Florida Steel Corporation*, 231 NLRB 651 (1977).[57] I will also recommend that Respondent be ordered to rescind the four warnings used as grounds for the discharge of Dennis Williams and all other warnings issued to employees since February 6, 1979, the date of the inception of the union campaign, for violation of its work rule prohibiting "Unauthorized absence from your work area or the Plant," and remove all references to said warnings from its records. This is not intended to nor shall it preclude lawful, nondiscriminatory enforcement of said rule after this recommended Order has been complied with. I shall further recommend that Respondent be ordered to recognize and bargain with the Union as the exclusive collective-bargaining agent of the employees in the unit found appropriate herein.

[56] *Gissel Packing Co., Inc.*, 395 U.S. 575 at 614 (1969).

[57] See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

I am of the opinion that the variety and seriousness of Respondent's unfair labor practices indicate a general disregard for employee statutory rights sufficient to warrant a broad order,[58] and I so recommend.

Pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[59]

The Respondent, Standart-Coosa-Thatcher, Carpet Yarn Division, Inc., Boaz, Alabama, its agents, officers, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in the Union, or any other labor organization, by discharging employees or otherwise discriminating in any manner in respect to their tenure of employment or any term or condition of employment.

(b) Refusing to recognize and bargain with the Union as the exclusive bargaining representative of all the employees in the above-described appropriate unit.

(c) Coercively interrogating employees concerning their and other employees' union activities and desires.

(d) Threatening employees with discharge, plant closure, loss of access to management, insistence on contract terms unpalatable to employees, or other unspecified reprisals because of their union activities.

(e) Making implied promises of benefit to employees conditioned on their abandonment of the Union.

(f) Telling employees that the timing of work-related warnings was caused by the existence of union activity.

(g) Threatening employees with discharge because they engage in protected concerted activity.

(h) In any other manner interfering with, restraining, or coercing its employees in the exercise of rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action designed to effectuate the purpose of the Act:

(a) Upon request, recognize and bargain with the Union as the exclusive representative of all employees in the aforesaid appropriate unit and, if an understanding is reached, embody such understanding in a written, signed agreement.

(b) Offer to Dennis Williams immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges, and make Dennis Williams whole for any loss of earnings he may have suffered by reason of the discrimination against him, in the manner set forth in the section of this Decision entitled "The Remedy."

(c) Rescind and expunge from its records all references to the four warnings issued Dennis Williams and all other warnings issued to employees on and after February 6, 1979, for violation of its work rule prohibiting "Unauthorized absence from your work area or the Plant," and advise its employees in writing that it has done so.

(d) Preserve and, upon request, make available to the Board and its agents, for examination and copying, all payroll records and reports, and all other records required to ascertain the amount, if any, of any backpay due under the terms of this recommended Order.

(e) Post at its Boaz, Alabama, offices and facilities copies of the attached notice marked "Appendix."[60] Copies of said notice, on forms provided by the Regional Director for Region 10, after being signed by Respondent's authorized agent, shall be posted by it immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that these notices are not altered, defaced, or covered by other material.

(f) Notify the Regional Director for Region 10, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply with this Order.

[58] *Hickmott Foods, Inc.*, 242 NLRB 1357 (1979).

[59] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[60] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."